

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6442

LINDA LEE BYRNES,

Petitioner - Appellant,

v.

S. BUTLER, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, Senior District Judge. (1:12-cv-07353)

Submitted: September 13, 2016 Decided: September 15, 2016

Before TRAXLER, AGEE, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Linda Lee Byrnes, Appellant Pro Se. Stephen Michael Horn, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Linda Lee Byrnes seeks to appeal the district court's order accepting the recommendation of the magistrate judge, construing her 28 U.S.C. § 2241 (2012) petition as a motion under 28 U.S.C. § 2255 (2012), and dismissing that motion for lack of jurisdiction.* The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive

* To the extent that Byrnes seeks to challenge the district court's determination that her claim regarding eligibility for early release under 18 U.S.C. § 3621 (2012) was without merit, we note that the timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. United States v. Midgette, 478 F.3d 616, 621-22 (4th Cir. 2007). Byrnes has waived review of the district court's ruling on that issue by failing to object to the magistrate judge's recommendation.

procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Byrnes has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED